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HAROLD B. WILLEY,

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 343

G. SEALS AIKEN,

Appellant,

vs.

WILLIAM RICHARDSON

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS

RALPH WILLIAMS,
Counsel for Appellee.

JONES, WILLIAMS, DORSEY, and KANE,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

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No. 343

G. SEALS AIKEN,

Appellant,

vs.

WILLIAM RICHARDSON

STATEMENT OPPOSING JURISDICTION

This Honorable Court should not take jurisdiction, but should dismiss this appeal for the reason that the Supreme Court of Georgia has held that the Federal questions now urged as the basis for jurisdiction in this appeal were, or could have been, raised in the trial court and on the original appeal from the rule absolute entered against the Appellant, and that, under State practice these issues are now res adjudicata. For this reason the Federal questions urged were not considered in the Supreme Court of Georgia and cannot be made the basis for an appeal to this Court. The essential facts in the case are as follows:

Aiken was attorney for Richardson and as such collected $3,425 for him in May, 1949. Richardson instructed Aiken to deduct his one-third attorney's fee and out-of-pocket

expenses and to remit the balance with a statement of the expenses deducted. Aiken mailed Richardson a check for $1,591.33 marked "Payment in Full", without any explanation of the deductions made. Richardson refused to accept this check, which he returned to Aiken, and after Aiken declined to account, Richardson filed a money rule against him in May, 1949.

Aiken filed numerous demurrers and an answer. His general demurrer was heard and overruled and he filed exceptions to the Court of Appeals of Georgia. The Court of Appeals of Georgia affirmed the trial court in an opinion which appears in 80 Ga. App. 591, 56 S. E. 2d 782. Aiken made a motion for a rehearing, which was denied. He then filed a petition for certiorari to the Supreme Court of Georgia, which was denied. He made a motion for a rehearing in the Supreme Court of Georgia and this was overruled. The case was then heard in the trial court on Richardson's demurrers to Aiken's answer, and certain grounds of the demurrer were sustained, one of them being that the answer was vague, indefinite, uncertain, evasive and self-contradictory. Aiken was given ten days to amend, but he refused to do so. Richardson then moved to strike his answer and this was done in trial court by order dated November 17, 1950. Richardson then moved the court to enter a rule absolute against Aiken and after argument of counsel this was done on the same date.

Aiken then filed exceptions to the Supreme Court of Georgia, which were transferred to the Court of Appeals of Georgia. The Court of Appeals, after argument, affirmed the judgment of the trial court in an opinion which appears in 85 Ga. App. 180, 68 S. E. 2d 288. Aiken made a motion for a rehearing which was overruled. He then filed a petition for certiorari with the Supreme Court of Georgia and this petition was denied. He filed a motion for a rehearing and it was overruled.

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Aiken then filed an appeal to the Supreme Court of the United States and printed briefs were submitted by both parties. This appeal was denied for want of a substantial Federal question. 344 U. S. 802, 73 S. Ct. 15. Aiken made a motion for a rehearing and this was overruled (73 S. Ct. 282). In due course, the remittitur was received from the Court of Appeals of Georgia and made the judgment of the trial court in January, 1953. This was a little less than four years after the money was collected and the money rule filed.

A few days after the remittitur from the Court of Appeapls had been received by the trial court Aiken filed a motion to set aside the rule absolute which had been entered against him on November 17, 1950. He set out in this motion numerous grounds, all of which could have been and, so far as we can determine, actually were, raised, considered and adjudicated on the two previous appeals of this case.

This motion was heard in the trial court in February, 1953, and in the course of his argument in support of this motion Aiken presented to the court numerous affidavits, depositions and letters. From none of these documents did it appear that Aiken had any legitimate expenses chargeable to Richardson for which he had not been given credit, nor did it appear that Aiken had ever paid or offered to pay Richardson any part of the $3,425 which he had collected in May, 1949, except for the conditional tender of $1,591.33 which was made without explanation in full settlement, and was for that reason refused.

At the conclusion of Aiken's argument, the Court, without inviting the presentation of evidence by Richardson, announced that it did not think the motion should be granted and on February 6, 1953, the Court entered an order overruling the motion on every ground. Aiken then filed an appeal to the Supreme Court of Georgia and on

May 12, 1953, the Supreme Court affirmed the judgment of the trial court in a unanimous opinion which appears in 209 Ga. 837, 76 S. E. 2d 393.

In this opinion, Justice Almand, speaking for the Court, held in Headnote 4 as follows:

> "Though this Court has jurisdiction of the writ of error because of the attack on the constitutionality of Code Section 24-206, it does not follow that this question must necessarily be decided, it being well settled that such question will not be passed upon if there is any other ground in the case upon which this Court can properly rest the decision. Burns v. State, 191 Ga. 60, 62 (11 S.E. 2d 350). The respondent could have made an attack on the validity of this section in the trial court and on the appeal therefrom, and failing to do so, he cannot now be heard to complain."

From this it is apparent that the court of last resort of the State of Georgia has held that the questions upon which the Appellant seeks to predicate this appeal are now res adjudicata. For that reason they were not considered by the Supreme Court of Georgia and they cannot now be made the basis for an appeal to this Court, as was held in the case of *Missouri, Kansas and Texas Railway Company* v. *John Sealy, et al.*, 248 U. S. 363, 63 Law Ed. 296, in Headnote 1, as follows:

From this it is apparent that the court of last resort of Georgia has held that the questions upon which the Appellant seeks to predicate this appeal are now res adjudicata. For that reason they were not considered by the Supreme Court of Georgia and they cannot now be made the basis for an appeal to this Court, as was held in the case of *Missouri, Kansas and Texas Railway Company* v. *John Sealy, et al.*, 248 U. S. 363, 63 Law Ed. 296, in Headnote 1, as follows:

> "A Federal question which the highest State court apparently as a matter of State practice, declared came

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too late to be considered, was not seasonably raised so as to afford the basis for a writ of error from the Federal Supreme Court to a State Court."

We therefore respectfully submit that since the Supreme Court of the State of Georgia has held that the contentions made by the Appellant have been concluded by the final judgment in the original case and cannot now be urged by him, these contentions cannot now be made the basis of an appeal to this Court and the appeal should be dismissed. We further submit that the purpose and effect of this appeal is to delay proceedings on the judgment of the lower court and payment of the money collected by the Appellant as attorney for the Appellee in May, 1949.

Respectfully submitted,

RALPH WILLIAMS,
Counsel for Appellee.

JONES, WILLIAMS, DORSEY & KANE,
Of Counsel.



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SUPREME COURT OF THE UNITED STATES

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Motion to Dismiss Appeal from Supreme Court of Georgia

Now Comes, William Richardson, Appellee, and moves this Honorable Court to dismiss the appeal in the above stated case for the reason that no Federal question is presented, the Supreme Court of the State of Georgia having held as a matter of State practice that the Federal question upon which the Appellant seeks to rely was not seasonably raised and is now res adjudicata and came too late to be considered by that Court and therefore too late to afford a basis for appeal to this Court.

RALPH WILLIAMS,
Counsel for Appellee.

JONES, WILLIAMS, DORSEY & KANE,
Of Counsel.